



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/171770

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2016, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to the reduction of FoodShare benefits (FS), a telephone hearing was held on February 24, 2016, at Milwaukee, Wisconsin. At the request of the petitioner, the record was held open for 15 days for the submission of additional information.

The issue for determination is whether the agency correctly determined petitioner's FS due to a change in in Department policy.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], HSPC
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Kenneth D. Duren, Assistant Administrator
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner receives FS as a one-person household. He received \$138 in FS in January, 2016.
3. Petitioner had a review in January, 2016. He reported that his rent had decreased from \$350 per month to \$340, and that he has no utility expenses, as heat and electricity are included in the rent.

4. In the FS budget for January, 2016, the petitioner received a deemed Heating Standard Utility Allowance of \$458 plus his then-prevailing rent of \$350, for total shelter expenses of \$808.
5. The Department changed its policy in recent months towards counting shelter expenses in the FS determination. Previously all FS households received a \$458 utility expense. The policy changed to provide that only expenses actually paid by the household can be counted. Petitioner did not receive any utility allowance because he did not report any actual utility expenses.
6. On January 22, 2016, the agency issued a Notice of Decision to the petitioner informing him that his FS would be reduced from \$138 to \$16, effective March 1, 2016, because his household's shelter and utility expenses had decreased.
7. On January 29, 2016, the petitioner filed an appeal with the Division of Hearings & Appeals contesting the reduction of his FS and requesting continued benefits. Benefits were continued pending the hearing decision.
8. At the hearing held on February 24, 2016, the petitioner asserted for the first time that he has a telephone expense. A telephone expense can generate a standard telephone utility allowance of \$30 as a deduction from income for FS. The record was held open for 15 days for the petitioner to provide proof in the form of a bill from his phone provider.
9. On or about March 10, 2016, the petitioner provided a telephone bill for a monthly cell phone expense with [REDACTED]. He is entitled to a telephone utility allowance in his FS budget retroactive to March 1, 2016. See, Exhibit #2.

DISCUSSION

In determining the amount of FS to be issued each month, the county must budget all of the recipient's nonexempt income. 7 C.F.R. §273.9(b). From that income, certain deductions are allowed. The deductions include a standard deduction, which currently is \$155 per month. 7 C.F.R. §273.9(d)(1); FS Handbook, Appendix 4.6.2. Another deduction is the earned income deduction, which equals 20% of the household's total earned income. 7 C.F.R. §273.9(d)(2); FS Handbook, App. 4.6.3. A third possible deduction is for medical expenses exceeding \$35 in a month for elderly or disabled persons. 7 C.F.R. §273.9(d)(3); FS Handbook, App. 4.6.4. A fourth deduction is for child/dependent care. 7 C.F.R. §273.9(d)(4); FS Handbook, App. 4.6.6. The final deduction is for shelter expenses; the deduction is equal to the excess expense above 50% of net income remaining after other deductions. 7 C.F.R. §273.9(d)(5); FS Handbook, App. 4.6.7.

In January, 2016, petitioner's shelter deduction was \$447.11 resulting from rent of \$350 and a deemed utility expense of \$458. For March, 2016, after a periodic review at which he reported no utility expenses, he received no shelter deduction because his rent was just \$340 and his utility expense was included. The \$340 shelter expense was less than one-half of petitioner's adjusted income (\$816.78[gross income] - \$155 [standard deduction] = \$661.78[adjusted income]). One half of \$661.78 is \$330.89. This means that his excess shelter expense deduction was only \$9.11 in March, when it had been \$447.11 in January. This change, then caused the FS reduction to \$16. See, Exhibit #1, pp. 10-11.

Prior to the federal 2014 Farm Bill the Wisconsin Department of Administration issued an annual energy assistance payment of \$1 to all FS households who were not already receiving energy assistance. This policy allowed Wisconsin to grant all FS households the Heating Standard Utility Allowance of \$458. Actual utility usage did not matter.

The 2014 Farm Bill changed this practice. The 2014 Farm Bill requires a household to have received an energy assistance payment of greater than \$20 to receive the \$458 utility standard. 7 U.S.C. 2014(e)(6)(C)(ii)(I). Therefore households that do not receive energy assistance receive the utility standard based on the utility obligation actually incurred by the household. Petitioner did not receive energy assistance and he reported no utility expenses.

Subsequently, at the hearing, he asserted for the first time that he has a telephone utility expense. During the open records period he provided a copy of his phone bill. He is therefore entitled to the \$30 standard telephone utility expense allowance in the FS budget.

Given that the petitioner has established that he has a phone utility and it appears to be a monthly expense, the matter will be remanded to the Department with instructions to treat the petitioner as if he pays a telephone utility expense of \$48 per month to [REDACTED], retroactive to at least March 1, 2016; and review and re-determine his FS eligibility to that date, with written notice to him. See, Exhibit #2. This expense was verified in the hearing process, and it does not need further verification for the present order, below.

CONCLUSIONS OF LAW

The agency correctly reduced petitioner's FS due to a general reduction in his shelter expenses; but incorrectly determined that he does not have an actual telephone expense; the matter must be remanded for review and re-determination.

THEREFORE, it is

ORDERED

That the matter is remanded to the agency to review and re-determine the petitioner's FS allotment retroactive to March 1, 2016, using a monthly telephone utility expense of \$48 paid to [REDACTED] as if it had been previously verified; and issue all supplemental FS to which he is otherwise entitled after application of the telephone standard utility allowance, if any, after offset for FS already issued. These actions shall be completed within 10 days of the date of this decision and no further verification is required to implement this order.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 14th day of March, 2016

\sKenneth D. Duren, Assistant Administrator
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 14, 2016.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability